

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1564 of 1984
Date of Decision :12.9.2007

Suresh Kumar and others

....Appellants

Vs.

Om Pati and others.

.... Respondents

Present: Mr.Shailendra Sharma, Advocate for the appellants.
Mr.Akshay Bhan, Advocate for the respondents.

Vinod K.Sharma, (Oral).

This Regular Second Appeal has been filed against the judgment and decree dated 1.2.1984 passed by learned court below vide which a suit filed by the appellant-plaintiffs for declaration and possession, was dismissed.

A suit was filed by the plaintiffs seeking declaration to the effect that the judgment and decree dated 12.12.1977 passed by Sub judge IInd Class, in Civil Suit titled as '*Om Pati Vs. Baljinder Singh*' regarding the land measuring 127 kanals 14 marlas was illegal, void and not binding upon the rights of the plaintiffs as the same is based on fraud, undue influence and the same was passed against the interests of the minors. A decree for consequential relief was also claimed. The suit was dismissed on merits as well as the appeal against the said judgment was also dismissed. However, it is noticed in this appeal that the decree under challenge in the suit was a consent decree based on a compromise entered into between the parties. In view of the provisions contained in Order 23 Rule 3-A of the Code of Civil Procedure, a separate suit challenging the decree of consent, was not competent and therefore, the suit as such, is not maintainable in

view of the law laid down by the Hon'ble Supreme Court in the case of ***Pushpa Devi Bhagat (D) through LRs Smt. Sadhna Rai vs. Rajinder Singh and others V (2006), SLT 412*** and also in view of the decision of this court in Civil Revision No.4038 of 2005 **Ramesh Chand & another vs. Anita Kumer and others** decided on 6.9.2007 where in it has been held that suit challenging the consent decree is not competent. Once the suit itself was not maintainable, no ground is made out to interfere with the judgment passed by the learned courts below in this regular second appeal.

Dismissed.

[Vinod K.Sharma]
Judge

12.09.2007
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